VIOLA D. LE MASTER

IBLA 80-761 Decided December 17, 1980

Appeal from decision of the California State Office, Bureau of Land Management, canceling lifetime lease issued under Mining Claims Occupancy Act. S 192 (CA).

Vacated and referred to Hearings Division for hearing.

1. Administrative Procedure: Hearings -- Mining Occupancy Act: Generally -- Mining Occupancy Act: Principal Place of Residence

Where BLM issues a decision to cancel a mining claim occupancy lease, which decision is based on a Forest Service report showing that someone other than the lessee has occupied the leased premises and that lessee has admitted that she was away from them; where lessee asserts that the claim is nevertheless "a principal place of residence" and requests a hearing; and where the record is insufficient to resolve this question, the matter will be referred for a hearing.

APPEARANCES: Viola D. Le Master, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On May 18, 1968, the United States, through the California State Office, Bureau of Land Management (BLM), entered into an occupancy lease with Viola D. Le Master for 0.97 acres of lands which she had occupied in connection with a mining claim. The term of this lease, which was issued under authority of the Mining Claim Occupancy Act of October 23, 1962, 30 U.S.C. §§ 701709 (1976) (hereafter "MCOA"), was for "a period not to exceed the life of Viola D. Le Master, Lessee, but only so long as the Lessee complies with terms and conditions of this lease."

On May 27, 1980, BLM issued a decision canceling the lease, holding that Le Master had not occupied the lands as her principal place of residence for a period of approximately 5 years, in violation of the terms of the lease. BLM cited term 8 of the lease, which states as follows:

> Unless otherwise provided, upon cessation of use of the lands as a principal place of residence, all rights, under this lease other than those provided in lease term 9, shall terminate.

BLM based its decision on a report prepared by officials of the Forest Service (FS), which supervises the leased lands, concerning its inquiry into the validity of the lease in 1979. This report contains information suggesting that Le Master had allowed others to live in the cabin as early as 1974. However, it also shows that she has denied that she has assigned her lease interest or abandoned use of the premises "as a principal place of residence," although she has admitted that it has been necessary "to be away from the property much of the time." BLM apparently neither undertook independent review of the facts nor afforded Le Master an opportunity to respond to the final report by FS prior to issuing its decision canceling her lease.

On appeal, Le Master challenges BLM's decision to cancel her lease without affording her an opportunity to present facts at a hearing. While the report by FS does establish, prima facie, that Le Master did in fact allow others to live on the leased premises, it is only fair to allow her an opportunity to challenge the accuracy of the information contained therein. A leasehold is an estate in land and, as such, is protected by Constitutional guarantees relating to property and due process. Cf. United States v. Walker, 409 F.2d 477 (9th Cir. 1969), which concerned only the discretionary denial of an MCOA application.

It is necessary to determine whether Le Master, who has admittedly been away from the premises "much of the time" has ceased to use them as "a principal place of residence" under Departmental precedents. In some circumstances, premises may be such even though the occupant-owner does not actually reside there, even for protracted periods, depending, inter alia, on the intent of the occupant and whether the absence was voluntary or involuntary. Ola W. McCulloch Sibley, 73 I.D. 53 (1966). This is because it is only required that the premises be "a principle place of residence" and not the single residence. Catherine R. Blythe, 21 IBLA 217 (1975); Frank O. O'Mea, 10 IBLA 187 (1973). On the other hand, intermittent or sporadic use of premises while regular residence is concurrently maintained elsewhere, does not constitute use as "a principal place of residence."

Funderberg v. Udall, 396 F.2d 638 (9th Cir. 1968); Robert A. Johnson, 75 I.D. 361 (1968); Henry P. Smith, 74 I.D. 378 (1967). The record, while it shows that Le Master was absent from the premises, is unclear as to other facts which may have bearing on this question, and it is therefore appropriate to refer the matter for a hearing. Eugene P. Tiscornia, Sr., 1 IBLA 195 (1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is hereby vacated, and the matter is referred to the Hearings Division for a hearing before an Administrative Law Judge as to relevant facts. The Judge should allow the parties to present evidence and issue a decision on all points relevant to the validity or invalidity of this lease, which decision will be final in the absence of an appeal to this Board.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge